

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-033-C - ORDER NO. 1999-170  
MARCH 8, 1999

IN RE: ITC Delta^Com Communications, Inc.,	)	ORDER DENYING	NR
	)	PETITION TO	
Complainant,	)	INTERVENE	
	)		
vs.	)		
	)		
BellSouth Telecommunications, Inc.,	)		
	)		
Respondent.	)		
	)		

**INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition to Intervene filed by e.spire Communications, Inc. and its certificated affiliates (“e.spire”).

On January 11, 1999, ITC^DeltaCom Communications, Inc. (“DeltaCom”) filed a Complaint against BellSouth Telecommunications, Inc. (“BellSouth”) regarding a dispute between DeltaCom and BellSouth concerning the payment of reciprocal compensation for calls placed by BellSouth customers to information service providers (“ISPs”) served by DelaCom. By its Complaint, DeltaCom alleges that ISP traffic is local traffic for which reciprocal compensation must be paid under the parties’ interconnection agreement.

e.spire filed a Petition to Intervene to be admitted as a party of record in the complaint proceeding filed by DeltaCom against BellSouth. In support of its Petition, e.spire states that e.spire and BellSouth have interconnected their networks for the exchange of local traffic in South Carolina under an interconnection agreement which requires each party to compensate the other for termination of local calls. e.spire further states that pursuant to the terms of its interconnection agreement e.spire has submitted its ISP traffic dispute with BellSouth to binding commercial arbitration and is not now seeking financial relief.

e.spire also states that it has a pending petition for arbitration of a new interconnection agreement with BellSouth before the Commission and that one of the issues in the pending arbitration case concerns the issue of whether dial-up calls placed to ISPs should be classified as local traffic for purpose of assessing reciprocal compensation. Additionally, e.spire offers that it has similar contractual disputes with BellSouth as set forth by DeltaCom, that e.spire believes that its interests will be affected by the Commission's decision interpreting the DeltaCom/BellSouth interconnection agreement as it relates to reciprocal compensation for ISP traffic, that the instant proceeding may decide issues which may affect e.spire's pending commercial arbitration against BellSouth, and that the instant proceeding may decide issues that will affect e.spire's petition for arbitration pending before the Commission to establish a new interconnection agreement with BellSouth.

BellSouth filed a Response in Opposition to e.spire's Petitions. By its Response, BellSouth asserts several reasons why e.spire's Petition to Intervene should be denied.

First, BellSouth asserts that the Complaint filed by DeltaCom presents a dispute that is an alleged breach of contract case of an agreement to which e.spire is not a party. Second, BellSouth asserts that e.spire has filed with the Commission a petition for arbitration of unresolved issues from its negotiations with BellSouth for a new interconnection agreement and acknowledges that one of the issues in that arbitration proceeding before the Commission is whether ISP traffic should be classified as local traffic for purposes of assessing reciprocal compensation on a going forward basis in the new interconnection agreement. BellSouth argues that e.pire should not be allowed to intervene in the instant docket and be permitted to argue the same issue twice.

Additionally, BellSouth contends that e.spire's stated interest is insufficient to justify intervention under South Carolina case law and further that e.spire's Petition to Intervene should be denied under Rule 24 of the South Carolina Rules of Civil Procedure ("SCRCP").

### **DISCUSSION**

Upon consideration of e.spire's Petition to Intervene and the Response in Opposition filed by BellSouth, the Commission finds and concludes that e.spire's Petition to Intervene should be denied. First and foremost, the Commission recognizes that the dispute which is the basis for the complaint in the instant docket is based on a contract between DeltaCom and BellSouth. e.spire is not a party to the underlying contract and is therefore not a named party in the Complaint.

Rule 24, SCRCP, governs "Intervention" and provides for intervention of right only "(1) when a statute confers an unconditional right to intervene; or (2) when the

applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Further, Rule 24, SCRPC, allows for permissive intervention "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common."

The Commission finds that e.spire has provided no statutory reference that confers either a conditional or unconditional right to intervene. Therefore, intervention is not appropriate under Rule 24(a)(1) or Rule 24(b)(1).

The Commission further finds that intervention is not warranted under Rule 24(a)(2). While e.spire alleges that it has similar contractual disputes with BellSouth and that disposition of the DeltaCom complaint may decide issues that will affect e.spire's arbitration proceeding now pending before the Commission, there is no showing that e.spire is "so situated that the disposition of the action may ... impair or impede his ability to protect that interest ..." See, Rule 24(a), SCRPC. In South Carolina Tax Commission v. Union County Treasurer, 295 S.C. 257, 368 S.C. 72 (S.C. App. 1988), the court stated, "[w]hen an applicant for intervention and an existing party have the same interests or ultimate objective in the litigation a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion, or nonfeasance." 368 S.E.2d at 74. Other than a general allegation that no other party can

adequately represent the interest of e.spire, e.spire has made no showing that its interests will not be adequately represented.

While e.spire alleges an interest in the proceeding involving DeltaCom's complaint by alleging similar contractual disputes with BellSouth as alleged by DeltaCom and further alleges that the instant proceeding may affect e.spire's petition for arbitration pending before the Commission on a new interconnection agreement with BellSouth, the Commission finds that e.spire's allegations do not provide sufficient justification to warrant intervention pursuant to Rule 24, SCRCP. In S.C. Tax Commission, supra, the court held that a party seeking intervention solely "to affect any legal precedent that may result from the case" was an insufficient basis for intervention. 368 S.E.2d at 74. Further, the court in S.C. Tax Commission held that "a mere general interest in the subject matter of the litigation is not sufficient" to warrant intervention. 368 S.E.2d at 75. Based upon the case law as cited, the Commission finds that e.spire has not demonstrated a sufficient basis to be granted intervention in this docket.

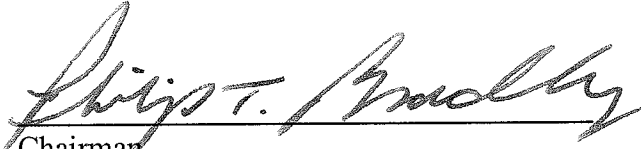
For the foregoing reasons, the Commission denies e.spire's Petition to Intervene.

IT IS THEREFORE ORDERED THAT:

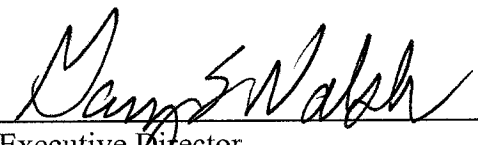
1. The Petition to Intervene filed by e.spire in the instant docket is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)